

**CREATING AND FUNDING  
A CRITICAL FARMS PROGRAM**

**within the Maryland Agricultural Land Preservation Foundation,  
Maryland Department of Agriculture**

A Report Presented to the Office of the Governor of Maryland  
and the Maryland General Assembly  
as Directed by Chapter 155, Laws of Maryland 2005

Maryland Department of Agriculture  
Maryland Department of Planning  
January 2007

## **Executive Summary: Creating and Funding a Critical Farms Program**

At the direction of Chapter 155, Laws of Maryland 2005,, the Maryland Agricultural Land Preservation Foundation and the Maryland Department of Planning propose a statewide Critical Farms Program. The Program would provide interim or emergency financing for easement acquisition or fee simple acquisition and resale with easement to permanently protect critical farms otherwise likely to be sold for nonagricultural uses. To set up the Program, the General Assembly should pass legislation to:

- fully authorize the creation and implementation of a Critical Farms Program by the Maryland Agricultural Land Preservation Foundation;
- authorize the expenditure of funds by the Foundation for the Critical Funds Program; and
- provide funds for a Critical Farms Revolving Account.

The funding recommendations for the Critical Farms Program are:

- Create a MALPF Critical Farms Revolving Account by legislation in 2007 (Appendix 1) and provide funding of \$4 million annually for four years for a total Revolving Account of \$16 million.
- Determine how best to provide funding for the Program. The recommendation of this report is to commit \$4 million annually for four years from general funds under the discretionary authorization of the Agricultural Stewardship Act of 2006. Other options for the Governor and General Assembly to consider include, but are not limited to, the following: the Foundation's share of any over-attainment in revenues from the Real Estate transfer taxes and/or any additional funding sources that may be established by the Governor and Legislature, including those recommended by the MALPF Task Force in its Final Report of December 2004.
- Provide in legislation the possibility of providing additional funds to the Program in the future in response to a documented need based on increased demand and/or increased acquisition costs. Additional funding may come from the initial funding sources or from other fund sources, such as the future repayment to MALPF of Real Estate transfer tax revenues transferred to the general fund passed by the General Assembly in Senate Bill 305 (2005).

## **Introduction**

A central recommendation in the Final Report of the Task Force to Study the Maryland Agricultural Land Preservation Foundation (December 2004) was to create a statewide Critical Farms Program to support the achievement of the Foundation's goals and objectives. Under SB 502 (2005 Legislative Session), the General Assembly directed the Maryland Agricultural Land Preservation Foundation (MALPF) and the Maryland Department of Planning (MDP) to examine the options for easement acquisition on critical farms and identify those that will enable the Critical Farms Program to succeed. Further, MALPF and MDP were instructed to conduct a study of the options available for funding the Critical Farms Program and submit a report, including proposed legislation, for the Critical Farms Program to the Governor and the General Assembly.

## **Goals of a Critical Farms Program**

Following the recommendations in the Final Report of the MALPF Task Force, the primary goal of a Critical Farms Program has been defined legislatively with the following language:

"The purpose of the Program is to provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses."

Thus, the objective of the Critical Farms Program is to acquire easements on properties that are at high risk for development and cannot be acquired in a timely manner through the traditional land preservation programs.

## **Preservation Options for a Critical Farms Program**

Two complementary ways to preserve critical farms are (1) the purchase of an easement option on an eligible property and (2) the in-fee purchase of an eligible property and its resale with an easement in place. We discuss both options below.

### Purchase of an Easement Option

Purchasing an easement option on property to be quickly committed to preservation is already employed by critical farms programs in Carroll and Frederick Counties. While the Critical Farms Program proposed here does not seek to replicate these county programs, they provide a model and important experience in developing a statewide counterpart.

The primary benefit of the purchase of an easement option as the central element of the Critical Farms Program is that it allows the Program to act quickly to provide interim or emergency financing for the acquisition of easements on critical farms that would otherwise be sold for nonagricultural purposes. While it would still be necessary to secure County and State approvals and verify the adequacy of the title and property description, the Critical Farms Program can greatly reduce the 12-to-18 month period needed to enter existing easement programs.

Authorization to purchase easement options should be the first element of the Critical Farms Program adopted and implemented. When a property is deemed eligible under Program criteria (discussed below), MALPF would buy an option to purchase an easement from the current landowner or contract purchaser. This option is a legal agreement committing the landowner or contract purchaser to place an easement on the property within a certain fixed period of time. For a contract purchaser of a critical farm, MALPF would pay for the easement option at the time of settlement on the transaction through which the purchaser acquires the farm. For an owner of a critical farm, MALPF would pay for the easement option as soon as an adequate title review and property description could be obtained.

The seller of the easement option would be required to apply to sell an easement to a program for which the property is eligible, specifically, MALPF, Rural Legacy, or other preservation program pre-approved by the Foundation. When a permanent easement is sold on the property, the easement option is repaid to the Critical Farms Program. The landowner would retain any funds paid for the easement in excess of the amount paid to the landowner for the easement option. If the property's easement is not successfully sold during this period (for

example, because of funding shortages or a failure by the landowner to apply to the programs for which the property is eligible), the option contract will, by its terms, automatically become a MALPF easement, with the easement option serving by default as full payment for the easement. Alternatively, the owner or contract purchaser of the critical farm may also choose to accept the easement option payment as full payment for the easement at the time of the easement option payment.

The three areas that consume time in placing an easement on a property are: (1) the appraisal and valuation process, (2) the ranking and approval process, and (3) the title review and verification of the property description.

The appraisal and valuation process can be expedited in several possible ways. The fastest valuation mechanism would be to create a simple formula to determine the per acre value of a critical farm's easement option. For example, the easement option value could simply be set at 70% of the average easement acquisition value in a county during the preceding three years, based on the acquisitions and pending acquisitions of all comparable easement programs operating in the County where the property is located (MALPF, Rural Legacy, and/or local preservation programs). Using this approach, Foundation staff would be able to inform counties at the beginning of each fiscal year what the easement option value will be for each County for the year. Because properties qualifying for the Critical Farms Program would be among the most desirable in a county for preservation (in terms of productive soils and strategic location), this easement option valuation system would minimize the risk of overvaluing what is paid to secure the easement.

This approach would be the quickest and simplest alternative to the existing appraisal process and would provide a fair value that protects the investment of public funds. The approach would require a statutory exemption (as provided for Rural Legacy Program's Easement Valuation System or EVS authorized in § 5-9A-04(c) of the Natural Resources Article) for any non-appraisal-based valuation system, because MALPF would be acquiring an interest in real property.

Another reason to eliminate the need for appraisals for Critical Farms is the fact that the purchase of an easement option would require the landowner to apply to sell an easement on the property through one of the established programs within a fixed period of time. Two appraisals would be required for many programs. Thus, requiring two appraisals for valuation of the easement option would require a total of four appraisals on the critical farm within a short period.

The rankings process can be expedited by agreed-upon criteria that "pre-qualify" properties (see "Eligibility Criteria" below). Foundation staff will know quickly if a property qualifies for the Program, based on predetermined standards that are clear and consistent. The approvals process can also be expedited by eliminating the need to establish an agricultural district for a critical farm property. Language restricting development during the process to put a permanent easement on the property would be put into the easement option contract.

The process by which title is reviewed and a property description is verified can be expedited as well. The Department of General Services will give top priority to processing easement option purchases through the Critical Farms Program. In the case of a contract purchaser of a critical farm where a quick commitment by the Program is essential to secure the sale of the property, the easement option purchase would be made contingent on a title review report and

property description verification acceptable to MALPF and the Department of General Services.

The purchase of easement options on eligible critical farms, if valued by formula as proposed, has the potential to save public money on the purchase of easements, while giving landowners numerous options to maximize their income resulting from easement sale. The easement option payment proposed will represent a significant potential discount on the full easement value of some properties. This will create an incentive for the landowner to seek to sell an easement through the regular MALPF program, Rural Legacy, or local programs. If the landowner chooses not to do so, or does not receive an offer, the State of Maryland will preserve that property, perhaps, at a significant discount and, in all cases, for an amount considerably less than average easement values in a county.

#### In-Fee Purchase and Resale with Easement

The in-fee purchase of a property defined as eligible under the Critical Farms Program and resale of that property with an easement in place is not as urgent an element of the proposed Program as the purchase of an easement option, but would provide the State the ability to preserve certain critical farms that otherwise could not be secured.

This element of the Program would enable MALPF to purchase critical properties on the open market and/or from an interested seller when the property is at high risk or is certain to be purchased for nonagricultural use. The property would be owned in fee simple by the State and then auctioned with the agricultural preservation easement in place to a private purchaser. The approach can also be used to direct prime productive farmland toward buyers qualified to operate a farming operation and, thereby, enhance return on the State's investment in the preservation of working farmland.

Notwithstanding the advantages of in-fee acquisition and resale, we recommend this approach to securing the preservation of critical properties to be secondary to the easement option contract approach. First, the process is necessarily slower and more cumbersome than the purchase of easements and easement options and has the potential for greater liability exposure on the part of the State. The property would be secured for preservation from the outset by the contract of sale.

Second, resale of the property will require approval by the MALPF Board and the Board of Public Works and, unless exempted by legislation, may also require review by legislative committee under current State land disposition statutes and the Maryland Constitution. Once a property has been resold, the liability exposure of the State from potential environmental issues will continue because the State of Maryland would be in the chain of title.

The mechanism by which the property's resale will proceed must be open, transparent, and replicable to avoid favoring any particular purchaser, unless the Program establishes qualifications for potential buyers who can best serve MALPF's goals and objectives. Thus, the options for resale are through (1) an open unrestricted auction, (2) an auction limited to those with approved farm plans and proven farming experience, (3) an auction giving a bidding advantage to those with approved farm plans and proven farming experience and/or approved and qualified young farmers, or (4) some variation of these possible mechanisms.

To facilitate the transaction and ensure the Critical Farms Program fulfills its objectives, the property's resale should probably be exempt from the Clearinghouse process and the ability

of counties to acquire a Critical Farms Program property for nonagricultural purposes. Review by the Board of Public Works and the General Assembly (or its designated committee) should be expedited, in the case of the Board of Public Works by combining acquisition and disposition approvals in the same review. (See, for example, the Natural Resources Article, § 5-904(e). Concerning the requirement for review by the General Assembly, see the constitutional amendment that passed in the November 2006 election, MD. Const., Article 12, § 3(b).)

The potential costs and cumbersome process of the in-fee purchase and resale of critical farms offset to some degree the savings and other benefits that may be gained by using this mechanism. Nonetheless, there are certain circumstances when other alternatives will not work to protect a critical farm under immediate threat of development.

### **Eligibility Criteria for Critical Farms**

The MALPF Task Force recommended that the definition of a "critical farm" should include three elements:

1. the qualifying strategic characteristics of the property, such as location and productivity;
2. the circumstances creating risk of the property being sold for nonagricultural purposes; and
3. the characteristics of the purchaser (a young farmer seeking a first farm or an experienced farmer seeking additional farmland).

Since the primary purpose of the Program is to protect highly productive farms at high risk of being lost to nonagricultural purposes, we suggest that the characteristics of the purchaser should be a secondary consideration and should only be used as a supplemental element in reviewing a property for the Critical Farms Program.

The key to protecting farms at high risk of being lost to nonagricultural uses is to establish eligibility and get funds to the landowner or contract purchaser as quickly and efficiently as possible while giving counties flexibility in formulating how the statewide program will work within their jurisdictions. While the specific details should be developed in the Critical Farms Program's implementing regulations, some general principles can be proposed for how to apply eligibility criteria efficiently to potential critical farm properties.

To meet the property's strategic characteristics requirement for relative location and productivity, Counties can use their existing rankings system for MALPF easement applications to establish a County-specific eligibility threshold for a "critical" farm. The statewide rankings guidelines already require that Counties rank properties primarily based on the productivity and strategic location of properties. Instead of having MALPF impose a statewide one-size-fits-all set of criteria, Counties should define "critical" through their individual ranking systems based on general state guidelines.

Counties could determine a threshold ranking score for critical farms using one of many possible and acceptable calculations. For example, a County could set the threshold at 85% of the highest score over the last three years, or set the threshold score at a level that would have guaranteed the property a MALPF easement offer in each of the previous three years. Because County staff could calculate the threshold ranking score for eligibility, landowners would know quickly if the Critical Farms Program option was worth pursuing.

Counties could also use Priority Preservation Areas (PPAs) to determine Critical Farms eligibility. A "Priority Preservation Area" is an area approved by the Foundation and the Maryland Department of Planning and established in a County's comprehensive plan. As described in the *Final Report* of the Task Force, "PPAs should be areas that contain the best physical and geographical characteristics and support profitable agricultural operations. The land base should be stable enough to support a variety of agricultural industries and be well protected from development."

The Foundation's Board of Trustees should periodically evaluate the operation of the Critical Farms Program to determine if the Counties' ranking systems and threshold scores are appropriate for the Program's successful operations. For example, it may or may not be appropriate to tie the Critical Farms Program and the Priority Preservation Areas Program together on a county-by-county basis. The Critical Farms Program is seeking a different, though related, set of objectives than the Priority Preservation Areas Program. Not every County can be expected to seek PPA certification, but uncertified Counties are certainly likely to contain farms critically important to local and statewide objectives. In addition, properties deemed critical by a PPA-certified County could conceivably lie outside its PPA.

Once eligibility of a property is established by its location and property characteristics, the circumstances creating risk of conversion or loss of the property for agricultural purposes must also be established. The circumstances could include the settlement of an estate that would compel the heirs to sell the property for development; an economic reversal or debt that could compel the sale of the property for development; or a wish by a landowner to sell the property to the highest bidder. To expedite the transaction, the County should also certify as part of its review process the number of development rights on each proposed property and that adequate access exists to exercise those rights.

Finally, we suggest that, after eligibility has been established, it may be in the State's interest to consider secondary characteristics to differentiate among competing properties, such as the farming background and qualifications of the potential purchaser of an at-risk property. For example, of particular interest to the Program would be a young farmer seeking to purchase a first farm or a currently active farmer seeking to expand his or her operation with the purchase of property deemed "critical" to the Program. However, the background and qualifications of the landowner or potential purchaser should be a secondary consideration to the quality and strategic importance of the property itself.

To address the issue of young farmers acquiring their first farms, MALPF is working in partnership with the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO). MARBIDCO is developing a separately-funded, independent Next Generation Farmland Acquisition Program. When a qualified young farmer applies to the Critical Farms Program and the property meets its eligibility requirements, MALPF Critical Farms Program staff will work with MARBIDCO and County staff to determine the best option to secure preservation and help the young farmer acquire a first farm – the Critical Farms Program, the Next Generation Farmland Acquisition Program, or the local County critical farms program (if available). The Critical Farms Program and MARBIDCO's Next Generation Farmland Acquisition Program will work in tandem to coordinate their activities and make certain that their activities complement and reinforce the goals of each Program. MALPF's Critical Farms Program focuses on protecting the most critical and strategic properties, while MARBIDCO's Next Generation Farmland Acquisition Program focuses on making farm acquisition possible for young farmers, whether or not the farm is critical to statewide or local preservation efforts.

## **Easement and Easement Option Valuation in a Critical Farms Program**

Speed is essential to the Critical Farms Program. Critical farms cannot wait for the normal MALPF easement appraisal process. Therefore, the Program needs to identify a legitimate and defensible value for an easement option that can be generated quickly and simply to eliminate the need for property-specific appraisals. On the one hand, the value should be low enough to provide an incentive for potential purchasers and landowners to bring the property into an easement program through the traditional application process to repay the easement option. On the other hand, the value should be high enough that the landowner is not penalized for selling an easement option under the Critical Farms Program if the option is not repaid by an easement offer from one of the established programs. Under such a circumstance, the easement option payment becomes by default the easement purchase value, and a permanent MALPF easement will go into effect.

As suggested earlier, a default easement payment that will meet these criteria is a payment of approximately 70% of the average easement value in a County for the previous three years. This value is low enough that a landowner is likely to have, in most cases, an incentive to repay the easement option by entering an easement program through existing procedures. The landowner would be able to keep that portion of any standard easement payment in excess of the easement option payment received from the Critical Farms Program. However, should an offer not be forthcoming or should the owner choose not to seek one, the easement option payment would be consistent with many discounted offers that are made in the regular easement acquisition offers by MALPF.

Easement values determined by MALPF's formula are generally 60-to-85% of a property's appraised fair market value (FMV). Discounting produced by competitive bidding in the easement acquisition cycle has lowered acquisition costs to an average of 60-to-70% of FMV in recent years. Second round acquisition costs for individual properties have ranged from somewhat less than 30% to over 50% of FMV in recent years. A property with an FMV of \$1,000,000 will have an easement value of approximately \$725,000, based on MALPF round one acquisition costs. The easement option payment would be 70% of \$725,000, or \$507,500. Thus, the easement option payment is at the upper end of round two acquisition costs based on competitive discounting. This would provide the potential for a "profit" of approximately \$217,500 to \$342,500 for a landowner for selling an easement through the regular MALPF program to repay the easement option. Should the owner accept the easement option payment as the default easement payment or not receive an offer from a regular easement program, the easement payment in this generalized example would be almost 51% of FMV, at the upper end of round two easement offers.

This approach would be based on already established easement values within the previous three years for properties within the County where the Critical Farms Program application is being made. This approach to valuation would require statutory authorization similar to that for the Rural Legacy Program (see § 5-9A-04(c) of the Natural Resources Article).

## **Funding a Critical Farms Program**

The most important element of funding for the long-term success of MALPF and its component Critical Farms Program is predictability. It is important to the success of the Program that



adequate funding is available at the Program's outset and when the revolving fund needs to be replenished or supplemented to meet demand over time.

For this reason, a two-pronged approach is needed to fund the acquisition of easements on critical farms to achieve the legislative intent of SB 502: (1) establish and fund a State Critical Farms Revolving Account; and (2) authorize local governments to use their allocations under the traditional MALPF program, or other sources of local funding, to participate in the Critical Farms Program.

Funds in the Revolving Account would be used for the purchase of easement option contracts on critical farms and for the in-fee purchase of critical farms when appropriate. Such commitments would be secured by the county's allocation of funds when such funds are available. Three outcomes are possible. First, if a permanent easement is sold from a critical farm to an established land preservation program within the required time, the easement option payment would be repaid to the Revolving Account at easement settlement. Second, if a permanent easement is not sold from a critical farm within the required time or if the landowner chooses to accept the easement option payment as payment for the easement, the easement option payment would be repaid to the Revolving Account from the county's allocation. Third, if a critical farm is acquired in-fee, the Revolving Account would be repaid when the farm is sold by the amount of the sale and the remaining value of the purchase price would be repaid from the county's allocation. Counties can always choose to employ local funding in place of or in addition to repayments from their allocations; in such cases, the repayment would be distributed proportionately based on the source of the original funds for the critical farms transaction.

On the one hand, once established, the Revolving Account will probably not need to be replenished. The purchase of easement options and in-fee purchase of critical farms will always be secured by a county's funding allocation. If the easement is sold to a county farmland preservation program or to a non-MALPF state program, the Revolving Account will be repaid from those resources. On the other hand, the need for Critical Farm funding is very likely to increase at least somewhat over time. Development pressure will increase and the remaining unprotected farmland will decrease, resulting in higher acquisition costs and increased need for a Critical Farms Program. Thus, funds in the Revolving Account will need to be periodically increased by additional appropriations by the Governor and the General Assembly. Such funding enhancements should be based on a report submitted to the Governor and General Assembly that documents the additional need.

The recommended level of funding to establish the Critical Farms Revolving Account is \$16 million (see Appendix 2). This funding should be provided in \$4 million increments over four years, allowing MALPF to implement the Program and develop projects with county partners. Options for funding the State Revolving Account available to the Governor and the Maryland Legislature include annual appropriations of State general funds, as authorized in the Agricultural Stewardship Act of 2006; the Foundation's share of any over-attainment in revenues from the Real Estate transfer taxes; repayments to MALPF of Real Estate Transfer Tax revenues transferred to the general fund from FY 2002-2006 pursuant to Senate Bill 305 from the 2005 Legislative Session (repayments could provide funding enhancements starting in the year 2012); and additional funding sources that may be established by the Governor and the Legislature, including those recommended by the MALPF Task Force in its Final Report of December, 2004.

## **Staff Requirements and the Administrative Process for a Critical Farms Program**

The development of the Critical Farms Program should take into account the need for staff for the increased workload. As noted in the *Final Report* of the MALPF Task Force, MALPF program responsibilities have increased since its inception with higher funding and participation rates, a growing monitoring responsibility, increasing legislative mandates and initiatives, and more complex legal issues. A successful Critical Farms Program will require an additional MALPF staff member to develop, implement, promote, and administer it.

Also, a discussion should take place between senior staff at the Department of Agriculture and the Office of the Attorney General (OAG) and the Department of General Services (DGS) concerning expected increased workload from the Critical Farms Program. As a result of this discussion, recommendations should be developed and addressed concerning the additional workload issues created by the Critical Farms Program affecting the OAG and the DGS.

The Critical Farms Program should also be able to take advantage of two supplemental sources of staff support to help manage the workload. First, when the objectives of State and County critical farms programs converge, the State should be able to offer grants to Counties with local critical farms programs to purchase the easement option, particularly when the County can secure a farm more quickly than can the State. To implement a grants option, MALPF and the interested County should negotiate a memorandum of understanding approved by the MALPF Board of Trustees and the County governing authority. As proposed for the State Critical Farms Program, grants would be counted against the County's fund allocation.

Second, land trusts should be encouraged to develop Critical Farms Program projects on behalf of Counties and seek their sponsorship in applying to the State Program. Because many County land preservation programs produce a heavy workload and/or only have part-time staff, this would enable a better use of resources in the development of Critical Farms Program projects. Local land trusts could take the lead in developing a project consistent with Critical Farms Program criteria on behalf of a County, secure County sponsorship, and carry through the purchase of the easement option through a memorandum of understanding approved by the relevant parties. Appropriate administrative and other applicable expenses assumed by the land trust could be reimbursed by MALPF at the successful conclusion of the project.

## **Critical Farms Program Recommendations**

The MALPF Task Force in its *Final Report* (December 2004) recommended that the General Assembly pass generally authorizing legislation for the Foundation to develop a Critical Farms Program as outlined above. This current report, "Creating and Funding a Critical Farms Program" (January 2007) has set out how this Program will operate and how it will be funded. Its recommendations are as follows.

- Approve the proposed legislative language to authorize, fund, and staff a Critical Farms Program based on using easement option contracts for emergency and interim or bridge financing and for fee-simple purchases of critical farms and their resale with an easement in place to facilitate the acquisition of permanent agricultural preservation easements or their equivalents on land critical to the objectives of individual counties' and the State's land preservation objectives. The specific eligibility requirements, easement option

- valuation, and processes will be developed and implemented within the general guidelines of the proposed legislative language and set out as appropriate in COMAR.
- Adopt the primary purpose of the Critical Farms Program to be the ability to act as quickly as possible to protect highly productive farms in strategic locations at high risk of being lost to nonagricultural use in cooperation with county partners.
  - Adopt the recommendation made by the Agricultural Stewardship Commission for up to a \$20 million annual commitment from general funds for MALPF, using \$4 million annually for four years to create the revolving fund needed for the Critical Farms Program to operate.
  - Create and fund a permanent senior staff position PIN in MALPF for the increased workload requirements associated with the development, implementation, and administration of the Critical Farms Program.

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## **APPENDIX 1: Proposed Legislative Language, Critical Farms Program**

### SECTION ONE.

#### **Article – Agriculture § 2-504. General Powers of Foundation**

The Maryland Agricultural Land Preservation Foundation has the following general powers:

- (1) *Power to sue.*- To sue and be sued in contractual matters in its own name;
- (2) *Power to contract.*- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;
- (3) *Power to restrict use of agricultural land.*- To acquire, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;
- (4) *POWER TO ACQUIRE REAL AND PERSONAL PROPERTY.* – TO ACQUIRE AND HOLD, BY GIFT, PURCHASE, DEVISE, BEQUEST OR GRANT, REAL AND PERSONAL PROPERTY, OR ANY INTEREST THEREIN, OF SIGNIFICANCE TO THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION IN ACHIEVING ITS LEGISLATIVE INTENT TO PRESERVE PRIME AGRICULTURAL LAND AND WOODLAND AND CONSERVE, IMPROVE, ADMINISTER, INVEST, OR DISPOSE OF THE PROPERTIES FOR THE PURPOSES OF THE FOUNDATION;
- ~~[(4)]~~(5) *Power to adopt regulations and procedures.*- To adopt, with the approval of the Secretary, regulations and procedures necessary to implement the provisions of this subtitle; and
- ~~[(5)]~~(6) *Power to promote dissemination of information.*- To promote the dissemination of information to farmers throughout the State concerning the activities of the Foundation.

#### **Article – Agriculture § 2-505. Maryland Agricultural Land Preservation Fund**

- (a) *Created and continued.* - The Maryland Agricultural Land Preservation Fund is created and continued for the purposes specified in this subtitle.
- (b) *Sources.* - The Maryland Agricultural Land Preservation Fund shall comprise:
  - (1) Any money made available to the Fund by general or special fund appropriations; and
  - (2) Any money made available to the Fund by grants or transfers from governmental or private sources.
- (c) *Disbursements.* – (1) The Comptroller of the Treasury may not disburse any money from the Maryland Agricultural Land Preservation Fund other than:
  - (i) For costs associated with the staffing and administration of the Maryland Agricultural Land Preservation Foundation;
  - (ii) For reasonable expenses incurred by the members of the board of trustees of the Maryland Agricultural Land Preservation Foundation in the performance of official duties; [and]
  - (iii) For consideration in the purchase of agricultural land preservation easements beginning with fiscal year 1979 and each fiscal year thereafter[-]; AND
  - (iv) SUBJECT TO THE FOUNDATION'S APPROVAL, TO SECURE AGRICULTURAL LAND PRESERVATION EASEMENTS THROUGH A CRITICAL FARMS PROGRAM, AS PROVIDED IN § 2-517 OF THIS SUBTITLE;
- (2) THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION MAY PROVIDE GRANTS TO:

- (i) ~~[The Maryland Agricultural Land Preservation Foundation may provide grants to] the Maryland Agricultural and Resource-Based Industry Development Corporation to facilitate ~~[the purchase of easements]~~ AN INSTALLMENT PURCHASE AGREEMENT PROGRAM OR THE FUNDING OF THE NEXT GENERATION FARMLAND ACQUISITION PROGRAM, subject to conditions jointly agreed upon by the Foundation and the Corporation.~~
- (ii) ~~[The Corporation may only use these grants for expenses related to:~~
  - 1. ~~Facilitate the purchase of easements under the critical farms or installment purchase agreement programs; or~~
  - 2. ~~The Next Generation Farmland Acquisition Program.]~~
- (ii) COUNTIES TO FACILITATE:
  - 1. THE CRITICAL FARMS PROGRAMS AS PROVIDED IN § 2-517 OF THIS SUBTITLE, SUBJECT TO CONDITIONS JOINTLY AGREED UPON BY THE FOUNDATION AND THE COUNTY; AND
  - 2. THE PURCHASE OF EASEMENTS WITH COUNTY INSTALLMENT PURCHASE AGREEMENT PROGRAMS APPROVED BY THE FOUNDATION, AS PROVIDED IN § 2-510.1 OF THIS SUBTITLE.
- (d) *Money remaining at end of fiscal year.* - Any money remaining in the Fund at the end of a fiscal year may not revert to the general funds of the State, but shall remain in the Maryland Agricultural Land Preservation Fund to be used for the purposes specified in this subtitle. It is the intent of the General Assembly that, to the extent feasible, the Foundation utilize the full amount of money available for the purchase of easements in any fiscal year so as to minimize the amount of money remaining in the Fund at the end of any fiscal year.
- (e) *Transfer of local subdivision's Program Open Space Funds.* - If a portion of a local subdivision's allocation of Program Open Space funds is transferred to the Maryland Agricultural Land Preservation Fund pursuant to the provisions of § 5-903 of the Natural Resources Article, the Foundation may utilize such transferred funds only for purchases of easements on land located within the boundaries of the subdivision which requested the transfer of funds. Such transferred open space funds shall be available in addition to any funds which would otherwise be allotted under this subtitle for purchases of easements in the county which requested the transfer of funds; and at the discretion of the local governing body, such transferred open space funds may be used for general purchases, or applied as the local contribution in matching purchases as required in §§ 2-508(a)(3) and 2-512(b)(1) of this subtitle.
- (f) *Restriction on use of funds.* - Money in the Fund from the sale of tax-exempt general obligation bonds may not be used to purchase easements under:
  - (1) An installment purchase agreement, as provided in § 2-510(k)(3) of this subtitle; ~~[or]~~
  - (2) A schedule of installments financed with certificates of deposit, as provided in § 2-510(k)(2) of this subtitle~~[-];~~ OR
  - (3) A CRITICAL FARMS PROGRAM, AS PROVIDED IN § 2-517 OF THIS SUBTITLE.
- (g) *Budget.* - The estimate budget of the Foundation for the next fiscal year shall be included with the budget of the Department.
- (h) *Audit.* - The Fund shall be audited annually by the Legislative Auditor in the manner prescribed by law.

#### **Article – Agriculture § 2-517. Critical Farms Program**

- (A) (1) The Maryland Agricultural Land Preservation Foundation ~~[and the Department of Planning]~~ shall establish a Critical Farms Program THAT IS SEPARATE AND INDEPENDENT FROM THE REQUIREMENTS OF THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION PROGRAM ESTABLISHED IN THIS SUBTITLE.

- (2) The purpose of the Program is to provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses.
- (B) (1) [A] THE FOUNDATION WITH county APPROVAL shall determine if a property qualifies for the Critical Farms Program in accordance with the criteria developed under paragraph (2) of this subsection.
- (2) (I) The Foundation ~~and~~ IN CONSULTATION WITH the Department OF PLANNING shall develop criteria for counties to consider when determining whether a property qualifies for the Program.
- (II) The criteria shall include:
  - 1. The qualifying strategic characteristics of the property, including location and productivity;
  - 2. The circumstances creating the risk of the property being sold for nonagricultural purposes;
  - 3. When applicable, the characteristics of the purchaser of strategic farmland seeking assistance from the Program;
  - 4. The consistency of the proposed acquisition with County goals and priorities and, IF APPLICABLE, the County's Priority Preservation Area; and
  - 5. Evaluation of the property as a priority easement acquisition.
- (C) VALUATION OF REAL PROPERTY UNDER THE CRITICAL FARMS PROGRAM – (1) THE FOUNDATION SHALL DEVELOP IN CONSULTATION WITH THE DEPARTMENT OF GENERAL SERVICES A METHOD FOR VALUING EASEMENT OPTIONS TO BE PURCHASED UNDER THE CRITICAL FARMS PROGRAM.
- (2) ANY FEE SIMPLE ACQUISITION AND SUBSEQUENT DISPOSITION OF PROPERTY UNDER THE CRITICAL FARMS PROGRAM SHALL REQUIRE TWO FAIR MARKET APPRAISALS AND A REVIEW, EVALUATION, AND RECOMMENDATION OF VALUE BASED ON THOSE APPRAISALS BY THE DEPARTMENT OF GENERAL SERVICES.
- (3) FOR PURPOSES OF SETTING AN EASEMENT ACQUISITION VALUE FOR A STATE EASEMENT PROGRAM, A PROPERTY PARTICIPATING IN THE CRITICAL FARMS PROGRAM BY SALE OF EASEMENT OPTION SHALL BE VALUED AS IF IT WAS NOT SUBJECT TO ANY RESTRICTION IMPOSED UNDER THIS SUBTITLE. A CRITICAL FARM MUST BE VALUED UNDER THE REQUIREMENTS OF THE AGRICULTURE ARTICLE § 2-511 FOR A CRITICAL FARMS PARTICIPANT TO SELL AN EASEMENT TO THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION PROGRAM.
- (D) DISPOSING OF REAL PROPERTY UNDER THE CRITICAL FARMS PROGRAM. – (1) REGARDING ANY PROPOSED IN-FEE ACQUISITION OF REAL PROPERTY BY THE CRITICAL FARMS PROGRAM, THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION MAY SUBMIT TO THE BOARD OF PUBLIC WORKS FOR APPROVAL AT THE SAME TIME AS THE ACQUISITION, A PLAN FOR SUBSEQUENT DISPOSITION OF ALL OR ANY PORTION OF THE REAL PROPERTY. DISPOSITION MAY INCLUDE SALE, LEASE, EXCHANGE, OR TRANSFER OF THE REAL PROPERTY.
- (2) WHEN DISPOSING OF PROPERTY PURSUANT TO A PLAN APPROVED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION SHALL IMPOSE A PERPETUAL AGRICULTURAL LAND PRESERVATION EASEMENT ON THE PROPERTY NECESSARY TO FULFILL THE INTENT AND PURPOSES OF THE CRITICAL FARMS PROGRAM TO RESTRICT THE USE OF THE PROPERTY FROM NONAGRICULTURAL PURPOSES AT THE TIME OF DISPOSITION.
- (3) BASED ON THE COUNTY APPROVAL FOR THE PARTICIPATION OF EACH PROPERTY IN THE CRITICAL FARMS PROGRAM, THE LOCAL JURISDICTION IN WHICH THE PROPERTY IS LOCATED SHALL HAVE NO RIGHT TO PURCHASE THE PROPERTY FROM THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION.

- (4) PROPERTY CONVEYED PURSUANT TO A PLAN FOR DISPOSITION APPROVED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NOT EXCESS REAL PROPERTY UNDER § 5-310 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.
- (E) THE GOVERNOR SHALL INCLUDE EACH YEAR FOR FOUR YEARS IN FY 2009-2012 IN THE BUDGET BILL AN APPROPRIATION TO THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION IN AN AMOUNT OF \$4,000,000 FOR THE CRITICAL FARMS PROGRAM, CONSISTENT WITH SECTION 5 OF THE AGRICULTURAL STEWARDSHIP ACT OF 2006. THESE FUNDS SHALL BE USED TO ESTABLISH AND FUND THE CRITICAL FARMS REVOLVING ACCOUNT AND ARE NOT SUBJECT TO THE RESTRICTIONS OF SECTION 5-408.H.1.II OF THE STATE FINANCE AND PROCUREMENT ARTICLE. THE GOVERNOR SHALL INCLUDE SUPPLEMENTAL FUNDING APPROPRIATIONS AFTER FY 2012 ONLY UPON SUBMISSION OF A REPORT THAT ADEQUATELY DOCUMENTS THE ADDITIONAL NEED.
- (F) STARTING IN FY 2009, AT LEAST \$60,000 SHALL BE INCLUDED IN THE OPERATIONAL BUDGET OF THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION TO PROVIDE THE NECESSARY STAFF FOR THE CRITICAL FARMS PROGRAM.
- ~~[(G) The Maryland Agricultural Land Preservation Foundation and the Department of Planning shall examine options for easement acquisition on critical farms and identify those that will enable the Critical Farms Program to succeed.]~~
- (G) ~~(D)~~ The Maryland Agricultural Land Preservation Foundation ~~[and the Department of Planning]~~ may ~~[jointly]~~ adopt regulations to implement the provisions of this section.

**Article – State Finance and Procurement § 10-302.1. Agricultural Land Preservation Easement AND CRITICAL FARMS PROGRAM Exception**

This subtitle does not apply to:

- (1) the release of a lot subject to an agricultural land preservation easement under § 2-513 of the Agriculture Article; OR
- (2) THE SALE, TRANSFER, EXCHANGE, LEASE, OR OTHER DISPOSITION OF REAL PROPERTY HELD BY THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION UNDER THE CRITICAL FARMS PROGRAM PURSUANT TO § 2-517 OF THE AGRICULTURE ARTICLE.

~~SECTION 2. AND BE IT FURTHER ENACTED, That [the Maryland Agricultural Land Preservation Foundation and the Department of Planning shall conduct a thorough study of the options available for funding the Critical Farms Program established in accordance with § 2-517 of the Agriculture Article, as enacted by Section 1 of this Act, and submit a report, including proposed legislation concerning the funding for the Critical Farms Program, to the Governor and General Assembly, in accordance with § 2-1246 of the State Government Article, on or before January 1, 2006]~~ THIS ACT SHALL TAKE EFFECT JULY 1, 2007.

~~[SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect July 1, 2005.]~~

## APPENDIX 2: The Critical Farms Revolving Account

To estimate the funding level necessary to make the Critical Farms Revolving Account work for the Program, the following information was obtained:

1. The average acquisition cost per acre per county over the last two years;
2. The average easement option purchase price that would have derived from this acquisition cost per acre per county over the last two years; and
3. The average farm size in acres for properties acquired.

Using this information, a range of values was calculated from \$7.2 million to \$28.7 million based on using the Critical Farms Program to acquire from one farm per county through four farms per county per year at 2005-2006 prices. (See Table 2.)

To arrive at a specific funding recommendation, a set of figures were derived from Table 2 and presented in Table 1 on anticipated funding requirements using the following simplifying assumptions:

1. One critical farm transaction per county annually will take place;
2. The average length of time the funding is committed to a transaction will be two years; and
3. The rate of increase in land values will diminish over time, from 10% annual increase currently to 2% annual increase in the eighth year of the Critical Farms Program.

Based on these considerations, a Revolving Account funded at \$16 million should be adequate to meet the anticipated demand into third or fourth year of the Program. Providing this funding in equal increments over the first four years (\$4 million annually) will allow the Critical Farms Program to generate the necessary administrative capacity and demand. The balance between demand and available funding can be evaluated at the end of this time period and adjusted to the Program requirements.

**APPENDIX 2: TABLE 1**

<b>Maryland Agricultural Land Preservation Foundation</b> <b>Critical Farms Program</b> Anticipated Funding Requirements (in millions of dollars)				
<b>YEAR</b>	<b>Incoming farms</b>	<b>Continuing farms</b>	<b>Sum of committed funds</b>	<b>Rate of increase in easement option value</b>
Year One	\$7.184	0	\$7.184	
Year Two	7.902	7.184	15.086	10%
Year Three	8.692	7.902	<b>16.594</b>	10%
Year Four	9.127	8.692	<b>17.819</b>	5%
Year Five	9.583	9.127	18.710	5%
Year Six	9.870	9.583	19.453	3%
Year Seven	10.166	9.870	20.036	3%
Year Eight	10.471	10.166	20.637	2%
Year Nine	10.680	10.471	21.151	2%
Year Ten	10.894	10.680	21.574	2%



**APPENDIX 2: TABLE 2**

**Maryland Agricultural Land Preservation Foundation  
Critical Farms Program**

Revolving Fund Account Requirement for Easement Options Based on 2005 and 2006 Acquisitions											
County	Average Acquisition Cost Per Acre		2005-6 Average	70% of Average	Average Farm Size in Acres		2005-6 Average	Average Critical Farms Revolving Fund Account Requirement			
	2005	2006			2005	2006		1 Farm	2 Farms	3 Farms	4 Farms
Baltimore	\$4,166.67	\$3,125.00	\$3,645.84	\$2,552.08	80	97	89	\$225,859.48	\$451,718.96	\$677,578.43	\$903,437.91
Caroline	937.50	2,154.40	1,545.95	1,082.17	74	159	117	126,072.22	252,144.45	378,216.67	504,288.89
Carroll	4,117.14	6,113.22	5,115.18	3,580.63	82	82	82	293,611.33	587,222.66	880,834.00	1,174,445.33
Cecil	3,958.39	5,500.03	4,729.21	3,310.45	118	334	226	748,161.02	1,496,322.04	2,244,483.07	2,992,644.09
Charles	2,936.71	5,653.28	4,295.00	3,006.50	183	149	166	499,078.42	998,156.84	1,497,235.26	1,996,313.68
Dorchester	1,333.33	1,773.85	1,553.59	1,087.51	183	92	138	149,533.04	299,066.08	448,599.11	598,132.15
Frederick	2,429.18	8,700.00	5,564.59	3,895.21	142	103	123	477,163.59	954,327.19	1,431,490.78	1,908,654.37
Garrett	1,986.78	1,975.00	1,980.89	1,386.62	66	125	96	132,422.50	264,844.99	397,267.49	529,689.99
Harford	6,000.00	9,350.00	7,675.00	5,372.50	55	101	78	419,055.00	838,110.00	1,257,165.00	1,676,220.00
Howard	20,000.00	0.00	20,000.00	14,000.00	17	0	17	238,000.00	476,000.00	714,000.00	952,000.00
Kent	2,466.67	3,039.82	2,753.25	1,927.27	217	181	199	383,527.03	767,054.06	1,150,581.09	1,534,108.11
Montgomery	0.00	5,800.00	5,800.00	4,060.00	0	140	140	568,400.00	1,136,800.00	1,705,200.00	2,273,600.00
Prince George's	7,800.00	0.00	7,800.00	5,460.00	132	0	132	720,720.00	1,441,440.00	2,162,160.00	2,882,880.00
Queen Anne's	1,975.80	4,450.00	3,212.90	2,249.03	130	114	122	274,381.66	548,763.32	823,144.98	1,097,526.64
St. Mary's	3,474.53	6,990.59	5,232.56	3,662.79	116	93	105	382,761.76	765,523.53	1,148,285.29	1,531,047.06
Somerset	1,250.00	0.00	1,250.00	875.00	123	0	123	107,625.00	215,250.00	322,875.00	430,500.00
Talbot	1,817.11	7,269.95	4,543.53	3,180.47	115	161	138	438,905.00	877,810.00	1,316,714.99	1,755,619.99
Washington	3,210.26	5,812.59	4,511.43	3,158.00	150	192	171	540,017.57	1,080,035.15	1,620,052.72	2,160,070.29
Wicomico	3,105.00	0.00	3,105.00	2,173.50	76	0	76	165,186.00	330,372.00	495,558.00	660,744.00
Worcester	1,143.93	2,178.06	1,661.00	1,162.70	336	170	253	294,162.21	588,324.43	882,486.64	1,176,648.86
								\$7,184,642.84	\$14,369,285.68	\$21,553,928.51	\$28,738,571.35

